



CITY OF DURHAM | NORTH CAROLINA

Date: May 3, 2016
To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Steven W. Hicks, Director, General Services Department
Subject: Land Lease between the City of Durham and New Cingular Wireless PCS, LLC

Executive Summary

New Cingular Wireless PCS, LLC (New Cingular) requests a ten (10) year land lease with the City for the continued operation of its cellular tower, located on a portion of 6605 Farrington Road, parcel #141733 (city tract #760), together with a non-exclusive twenty (20) foot wide access easement that extends to Farrington Road, a public right-of-way (collectively referred to as the Leased Site). New Cingular's existing lease expires on June 14, 2016.

Real Estate staff has negotiated a new ten (10) year lease beginning June 15, 2016 and ending June 14, 2026. New Cingular will pay initial annual rent of \$39,000.00. The rent will increase 3% annually for the remainder of the lease term (see Financial Impact Section).

N.C.G.S. 160A-272 requires that "Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by any of the procedures authorized for sale of real property." The City proposes to lease the property pursuant to the Upset Bid Procedure of N.C.G.S. 160A-269.

Recommendation

The Department of General Services recommends that City Council:

1. Approve the proposed land lease with New Cingular Wireless PCS, LLC. for a ten (10) year term for the continued operation of its cellular tower, located on a portion of 6605 Farrington Road, parcel #141733 (city tract #760), together with a non-exclusive twenty (20) foot wide access easement that extends to Farrington Road, a public right-of-way, and to advertise for upset bids pursuant to the procedure set forth in N.C.G.S. 160A-269;
2. Authorize the City Manager, pursuant to Section 86.3 of the City Charter, to accept the bid from the highest responsible bidder at the conclusion of the upset bid process; and
3. Authorize the City Manager to execute the lease.

Background

The original lease between the City of Durham and New Cingular was executed in 1996. Subsequently, City Council approved an additional lease with New Cingular from June 15, 2006 until June 14, 2016. New Cingular constructed and currently maintains telecommunications equipment on the Leased Site.

The Real Estate Division has been working with cellular providers since late-1995 to locate antennas and towers on City-owned structures and land. Currently, there are cellular antennas on the City's Pettigrew Street and Ellis Road water tanks, on the City's towers at Huckleberry Reservoir and Camden Avenue, and cellular towers on land-leased property at

the former New Hope Treatment Plant site and the subject, 6605 Farrington Road site.

Issues/Analysis

The lease between the City and New Cingular at 6605 Farrington Road is beneficial to the residents of Durham as leasing of City-owned land by New Cingular generates a steady income stream that would not otherwise exist. City Council's approval of the recommendations set forth above will authorize Real Estate staff to begin the upset bid procedure upon advertisement of the proposed lease.

Synopsis of the upset bid procedure

The City may solicit and receive bids to purchase property. A five percent (5%) deposit must be submitted with the bid. When a bid is made and City Council proposes to accept it, the bid is advertised in a local newspaper. This begins the upset bid procedure. The notice contains a general description of the property, the amount and terms of the bid, a notice that within 10 days, any person may raise the bid by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder, the date and time by which upset bids should be received, and the location to submit bids.

This procedure is repeated until no further qualifying upset bids are received, at which time the City Manager may either accept the bid and sell the property to the highest qualifying bidder or choose to not accept the bid.

A bid submitted by any person owing delinquent City-County taxes or assessments will not be accepted. Closing will be held within 60 days of the City's acceptance of the bid.

Alternatives

City Council could decide not to approve the lease with New Cingular. This alternative is not recommended because if the City does not permit New Cingular to continue at this location, telephone service may be interrupted to the residents of Durham who subscribe to New Cingular service, and the City will lose revenue of \$447,091.00 over a ten (10) year period. Additionally, one of the goals of the Unified Development Ordinance (UDO) is to encourage the use of public lands and structures as locations for telecommunications infrastructure. If City Council decides to not approve the lease, it is likely that New Cingular will build telecommunications structures on privately-owned property, leaving UDO's goals unmet.

Financial Impact

New Cingular will pay \$39,000.00 for the first year of the lease. The rent will escalate by 3% each year in years two (2) through ten (10). Total revenue generated during the lease term is \$447,091.00.

The rent schedule is as follows:

Year 1: \$39,000.00
Year 2: \$40,170.00
Year 3: \$41,375.00
Year 4: \$42,616.00
Year 5: \$43,895.00
Year 6: \$45,212.00
Year 7: \$46,568.00

Year 8: \$47,965.00

Year 9: \$49,404.00

Year 10 \$50,886.00

\$447,091.00

UBE Summary

This item does not require review by the Equal Opportunity/Equity Assurance Department.

Attachments:

Land Lease Agreement

Overview Map

Inset Map